

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE 54 OF 2006

REPUBLIC PROSECUTOR

VERSUS

ERICK WASHIALI..... ACCUSED

R U L I N G

The accused **ERICK WASHIALI** is charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code.

The particulars of the offence are that on the 8th day of September, 2006 at Shitoto village, Shibinga Sub-location, Shibinga Location in Butere/Mumias District, within Western Province, murdered **S.M.**

The case for the prosecution is that on 8.9.06, the deceased who was a five year old girl was reported to have been thrown into river Lusumu by the accused. A search was conducted in the river but did not yield any fruits that day.

The following day the body of the deceased was recovered from the river. The body had signs of a sexual assault. The matter was reported to the police. The accused was subsequently arrested and charged.

In support of their case, the prosecution called a total of six witnesses. PW1, **PATRICK OKHAAS NYANJI**, the father to the deceased found family members searching for the deceased at the river. His evidence is that he was informed that the accused had thrown the deceased into the river. PW1 did not reveal the person who gave him the information.

PW2, **WYCLIFFE OPANDA OTIPA** a neighbour was also informed by PW1 about the incident. The source of this information was not revealed. The evidence of PW1 and PW2 is therefore hearsay. PW4, **BEATRICE OKUTOYI**, a cousin to the deceased discovered the body of the deceased floating in the river. PW3, **DICKSON OPANDA SUCHI**, an uncle to the deceased identified the body of the deceased to the doctor who carried out the Postmortem. The Postmortem report was produced in court by PW5, **DR. FLORENCE WANGWA**. PW6, **PC ALBERT KIPRUNO** witnesses the Postmortem. No evidence of the investigation carried out was called by the prosecution. There is no evidence to link the accused to the offence he is charged with.

The prosecution has failed to establish a prima facie case against the accused. The accused is acquitted under Section 210 Criminal Procedure Code.

Delivered, dated and signed at Kakamega in open court this 28th day of June, 2012

B. THURANIRA JADEN

J U D G E

